



FILED

11-08-17
11:24 AM

GK1/UNC/sf3 11/8/2017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation pursuant to Senate Bill 380 to determine the feasibility of minimizing or eliminating the use of the Aliso Canyon natural gas storage facility located in the County of Los Angeles while still maintaining energy and electric reliability for the region.

Investigation 17-02-002

NOT CONSOLIDATED

Order Instituting Investigation on the Commission's Own Motion to Determine Whether the Aliso Canyon Natural Gas Storage Facility has Remained Out of Service for Nine or More Consecutive Months Pursuant to Public Utilities Code Section 455.5(a) and Whether any Expenses Associated with the Out of Service Plant Should be Disallowed from Southern California Gas Company's Rates.

Investigation 17-03-002

RULING DENYING THE MOTIONS OF IMPERIAL IRRIGATION DISTRICT FOR CONSOLIDATION OF INVESTIGATION 17-02-002 AND 17-03-002

Imperial Irrigation District (IID) requests that the California Public Utilities Commission (Commission) consolidate Investigations (I.)17-02-002 and I.17-03-002, both of which are proceedings involving the Aliso Canyon Natural Gas Storage Facility (Aliso Canyon or facility). IID further requests that the Commission refocus the consolidated investigation to determine responsibility

for the natural gas leak from the facility on October 23, 2015. This ruling denies the motions for consolidation.

1. Background

On February 9, 2017, the Commission opened Order Instituting Investigation (OII) I.17-02-002 pursuant to Senate Bill (SB) 380¹ and Rule 5.1.² The purpose of the OII is to determine the feasibility of minimizing or eliminating the use of the Aliso Canyon Natural Gas Storage Facility (Aliso Canyon or Facility) while still maintaining energy and electric reliability for the Los Angeles region and just and reasonable electric and gas rates in California. Southern California Gas Company (SoCalGas), the operator of Aliso Canyon, was named as a respondent to the OII.

On March 2, 2017, the Commission opened I.17-03-002 to determine whether the Aliso Canyon facility has remained out of service for nine or more months pursuant to Public Utilities (Pub. Util.) Code § 455.5(a). Pub. Util. Code § 455.5(a) provides, in relevant part:

...the Commission may eliminate consideration of the value of any portion of any electric, gas, heat or water generation or production facility which, after having been placed in service, remains out of service for nine or more consecutive months, and may disallow any expenses related to that facility.

On June 15, 2017, IID filed motions in both I.17-02-002 and I.17-03-002 to consolidate and refocus the two investigations. In I.17-02-002, on June 22, 2017 and June 26, 2017, Protect Our Communities Foundation and Issam Najm, respectively, filed responses in support of IID's motion to consolidate. In

¹ Statutes of 2016, Chapter 14.

² All references to Rules refer to the Commission's Rules of Practice and Procedure.

addition, on June 28, 2017 and June 30, 2017, Food & Water Watch and Save Porter Ranch, respectively, also filed responses in support of the motion to consolidate. On June 30, 2017, Environmental Defense Fund filed a response in non-opposition to the IID motion. No party, aside from SoCalGas, filed a response in I.17-03-002.

On June 29, 2017, SoCalGas filed responses in both proceedings in opposition to IID's motion to consolidate. On July 12, 2017, in I.17-03-002, IID filed a reply to SoCalGas's response to the motion. Likewise, IID filed a reply in I.17-02-002 on July 13, 2017.³

2. IID's Motion to Consolidate and Responses of Parties

In its motion, IID argues that the two investigations are interrelated and share many of the same witnesses and documents. IID characterizes I.17-02-002 as an investigation into whether Aliso Canyon should be reopened and I.17-03-002 as an investigation into whether Aliso Canyon has been operational since the time of the Aliso Canyon natural gas leak. IID describes these two questions as inconsistent statements of the same issue. As such, IID claims that consolidation would be beneficial in terms of efficiency and in limiting inconsistencies between the two proceedings. IID argues that separation of the proceedings will create unnecessary complications, such as duplicative litigation, and could result in inconsistent applications of the law and conflicting rulings.

IID also seeks consolidation in order to refocus the investigation on issues the Commission previously declared to be out of scope, specifically the root cause of the Aliso Canyon leak. IID contends that information on the root cause

³ The assigned Administrative Law Judges in I.17-02-002 and I.17-03-002 approved the delayed replies of IID in both proceedings.

and responsibility for the leak is imperative for a proper ruling in both proceedings, and all other issues should be considered secondary. IID also states that public safety requires consolidation, emphasizing that knowledge of the root cause of the leak is determinative for any ruling as to whether Aliso Canyon can be reopened without further risk to the public. IID additionally contends that consolidation is necessary in order to refocus an investigation that IID claims has been unnecessarily delayed.

Finally, IID asserts that consolidation and refocusing of the investigations are necessary to restore public confidence in the Commission. IID cites incidents such as the natural gas explosion in San Bruno and the failure of the San Onofre nuclear power plant as evidence that a restoration of public confidence is necessary.

Parties that filed responses to IID's motion generally support IID's rationale for consolidation. Environmental Defense Fund, while not opposing the motion, seeks assurances that the scope of I.17-02-002 will not be narrowed solely to the cause of the leak and issues of culpability to the exclusion of market redesign issues that could make continued operation of the Aliso Canyon facility unnecessary.

3. SoCalGas's Response

SoCalGas asserts that separate adjudication of these issues is proper as each proceeding addresses distinct questions, hinges on different facts and considerations, and involves different interested parties. SoCalGas argues that the two proceedings and the root cause analysis raise three issues that do not overlap and constitute distinct legal questions that should be examined individually. First, SoCalGas characterizes I.17-02-002 as a question of the feasibility of eliminating the use of Aliso Canyon solely in terms of its potential

effects on energy reliability and rates in Southern California. Second, SoCalGas describes I.17-03-002 as an investigation into whether Aliso Canyon has been out of service or a “plant held for future use” under Public Utilities Code Section 455.5(a), for the purpose of determining whether the Commission should disallow all costs related to Aliso Canyon from SoCalGas rates. SoCalGas classifies the third issue as any questions related to the cause of the natural gas leak or issues of culpability.⁴

SoCalGas asserts that these three issues present no overlapping facts and will utilize different methodologies for investigation. I.17-02-002 involves forecasting gas and electric demand and natural gas usage, whereas I.17-03-002 looks backwards during a specific time period to determine whether Aliso Canyon was and continues to be used and useful. As for the final issue, SoCalGas contends that questions regarding the root cause of the leak cannot be examined until the root cause analysis has been completed, and the Commission has not yet initiated any proceeding into the matter.

SoCalGas also argues that IID’s argument is founded on an oversimplification of the issues and that the proceedings do not contain overlapping facts that justify consolidation. SoCalGas asserts that IID fails to make an affirmative showing that there is any risk of inconsistent rulings, as proper characterization of the proceedings shows no overlapping issues. SoCalGas also contends that IID’s request to refocus the investigation on the root cause of the leak is contrary to IID’s own objectives of avoiding further delays, as

⁴ The Commission, along with the Department of Oil, Gas and Geothermal Resources, jointly, are undertaking a root cause analysis of the Aliso Canyon natural gas leak. As of this ruling, the root cause analysis has not been completed, and the Commission has not opened a formal proceeding to address issues of culpability.

the Commission has stated that no formal investigation proceeding into the root cause can occur until the ongoing Safety and Enforcement division investigation is complete.

4. IID's Response

IID reiterates its claim that the proceedings inconsistently ask the same related question as to whether Aliso Canyon should be reopened. IID maintains that both proceedings are essentially questions related to whether Aliso Canyon should be reopened, and consolidation would promote judicial efficiency. As such, IID claims that efficiency is best served by adjudicating both proceedings at once in order to ensure a consistent ruling.

IID also contends that SoCalGas adopts an overly narrow characterization of the issues in order to obscure the related questions of law and facts. IID states that SoCalGas misconstrues the issue when stating that requiring information regarding causality would delay proceedings. IID further asserts that continuing the proceedings is impossible without that information. IID reemphasizes its argument that knowledge of causation and responsibility for the leak are determinative and required to make a ruling in both proceedings.

5. Discussion

The main point of contention between the parties is whether the proceedings are sufficiently interrelated to warrant consolidation and the degree to which they share common questions of law and fact. Rule 7.4 of the Commission's Rules of Practice and Procedure states that, "[p]roceedings involving related questions of law or fact may be consolidated." IID argues that the two proceedings should be consolidated because they ask inconsistent questions relating to the same core issue: whether Aliso Canyon should be reopened. The Commission supports maximizing efficiency and reducing

litigation costs whenever possible and uses consolidation to achieve that end. In this case; however, no such efficiencies are supported by consolidation.

The Assigned Commissioner and Assigned Administrative Law Judge's Scoping Memo and Ruling in I.17-02-002 (Scoping Memo), issued on June 20, 2017, expressly states that the purpose of that investigation is "to determine the feasibility of minimizing or eliminating the use of the Aliso Canyon Natural Gas Storage Facility while still maintaining energy and electric reliability for the Los Angeles region and just and reasonable rates in California." Stated differently, I.17-02-002 solely examines the potential consequences to the energy infrastructure and rates should usage of Aliso Canyon be reduced or should the facility be closed. The Commission will undertake a comprehensive modeling effort, with feedback from parties, to understand the impacts of partial or full closure of the facility.

The central issue of I.17-02-002 is not, as characterized by IID, a question of whether the Commission should reopen the facility. Indeed, the Aliso Canyon facility is currently operational at reduced capacity following a finding by the Department of Oil, Gas and Geothermal Resources (DOGGR) with a concurrence of the Commission that the facility is "safe to operate and can reopen at a greatly reduced capacity in order to protect public safety and prevent an energy shortage in Southern California."⁵ DOGGR is the agency with primary jurisdiction over the operational condition of the wells and the agency responsible for making a finding of safety regarding well operation.

⁵ See July 19, 2017 News Release of California Conservation and the California Public Utilities Commission, "State Inspections Confirm Safety of Aliso Canyon Natural Gas Storage Facility"

I.17-02-002 is a forward-looking proceeding to understand the effects of reducing or eliminating use of the facility. While the scope of the proceeding does ask whether the Commission should reduce or eliminate the usage of the facility on a going forward basis given the outcome of the modeling effort, it is not a proceeding to address whether the facility should be reopened at all.

Separately from I.17-02-002, the Commission, in the OII opening I.17-03-002, states that the purpose of that investigation is to “determine whether the Aliso Canyon Natural Gas Storage Facility has remained out of service for nine consecutive months pursuant to Pub. Util. Code § 455.5(a); and if found to be out of service, whether the Commission should disallow all costs related to Aliso Canyon from the rates of Southern California Gas Company.” IID’s characterization of this proceeding as a question of whether Aliso Canyon has been open is not entirely incorrect but neglects to acknowledge that the primary issue of I.17-03-002 is of costs and rates pursuant to the requirements of the Public Utilities Code.

The questions raised in both proceedings comprise more than the sole question of whether Aliso Canyon should be reopened. Indeed, the facility is currently operational, although at a reduced level. SoCalGas correctly states that the two investigations examine discrete issues with no overlapping facts.

I.17-02-002 looks forward at the prospective effects of reducing usage of or closing Aliso Canyon while I.17-03-002 comprises a retrospective look at the facility’s operating status during a specific time period. The outcome of I.17-03-002 has no direct bearing on the outcome of I.17-02-002 and vice versa.

Regarding the root cause analysis and matters of culpability, IID argues that no decision to reopen Aliso Canyon can occur absent knowledge of the root cause of the well failure. Therefore, IID requests that the consolidated

proceedings be refocused toward the root cause analysis. As stated earlier, DOGGR has already undertaken extensive testing of the Aliso Canyon facility and has deemed it to be safe for operation at limited levels, a finding with which the Commission concurred. Thus, IID's assertion that the root cause analysis must be completed before the Commission can make a determination to reopen the facility, which would require the Commission to consolidate I.17-02-002 and I.17-03-002 with an as-of-yet unopened formal proceeding addressing the root cause analysis and matters of culpability, is unsupported. The Aliso Canyon facility is currently operational.

Nothing in this ruling should be construed to mean that continued safe operation of Aliso Canyon facility is out of the scope I.17-02-002. Indeed, the question of whether the Commission should continue to approve operation of the facility is a fundamental question the Commission seeks to answer. The I.17-02-002 Scoping Memo states "if the Commission were to determine that Aliso Canyon is needed to maintain energy and electric reliability for the region at just and reasonable rates, the Commission will require that SoCalGas follow all rules and regulations, including any new rules imposed on SoCalGas through Senate Bill 380, to ensure safe operation of the well field."⁶

The Scoping Memo explicitly rules that the scope of Phase 2 will include consideration of the safety of the facility as a factor determining whether to authorize the reduction or elimination of use of Aliso Canyon. Therefore, in I.17-02-002, parties are free to put forward facts and arguments regarding the safety of the facility, including that the results of the root cause analysis are required to make an ongoing finding of operational safety.

⁶ Scoping Memo and Ruling of Assigned Commission and Administrative Law Judge at 7.

Nothing in this ruling should be construed as limiting the scope of I.17-02-002 in regards to safety. Furthermore, nothing in this ruling should be construed to mean that the scope of either I.17-02-002 or I.17-03-002 cannot be updated should updates be warranted. However consolidation of I.17-02-002 with the root cause analysis proceeding (that is not yet opened) and I.17-03-002 is not required to protect public health and safety interests. Consideration of public health and safety is already within the scope of I.17-02-002.

In conclusion, IID has failed to demonstrate that I.17-02-002 and I.17-03-002 contained sufficiently interrelated questions of law or fact to warrant consolidation. IID has not demonstrated that I.17-02-002 and I.17-03-002 must be consolidated with any forthcoming formal proceeding addressing the root cause of the well failure and matters of culpability in order to ensure public health and safety. Accordingly, IID's motion for consolidation is denied.

ORDER

IT IS ORDERED that Imperial Irrigation District's motion for consolidation of Investigation (I.)17-02-002 and I.17-03-002 are denied.

Dated November 8, 2017, at San Francisco, California.

/s/ GERALD F. KELLY

Gerald F. Kelly
Administrative Law Judge

/s/ MELISSA K. SEMCER

Melissa K. Semcer
Administrative Law Judge